THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.4017 of 2005

21.3.2006

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Between:

A.Bala Subrahmanyam, S/o.Basava Punnaiah

And others.

… Petitioners

AND

The District Collector, Guntur

And another

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.4017 of 2005

ORDER:

The three petitioners assail the notification under Section 4(1) of Land Acquisition Act, 1894 (the Act, for short) issued by the first respondent proposing to acquire the land admeasuring Acs.1.35 in survey Nos.173/7B, 173/9A, 173/9B and 173/10 of Chinaravuru village of Tenali Mandal in Guntur District.

The petitioners allege that the first petitioner is the owner of the land admeasuring Acs.0.50 in survey No.173/7B, petitioners 2 and 3 are owners of the land admeasuring Acs.0.35 in survey No.173/10, which they got by way of a gift at the time of their marriage. Their names are found in the revenue records by reason of mutation carried out. The first respondent issued notification and published the same in gazette dated 04.10.2003. The land is sought to be acquired for provision of house sites as per the notification. However, the second respondent issued a notice of enquiry under Section 5A of the Act dated 10.3.2004 stating that the land is sought to be acquired for provision of burial ground for scheduled caste people Chinaravuru village. Therefore, the petitioners contend that the land proposed to be acquired is not in accordance with law. They also contend that they are small farmers, that the land cannot be used as burial ground and that the land is very costly for which reason the government can acquire the other land.

This Court while admitting the writ petition ordered *status quo* as obtaining on 02.3.2005. The respondents moved this Court by filing W.V.M.P.No.1299 of 2004. When this application is listed before this Court, the matter was heard finally and is being disposed of by this order. Respondents 1 and 2 filed counter affidavit along with the application for vacating the interim orders and respondents 3 to 5, who are

impleaded, have also filed a counter affidavit opposing the writ petition.

In the counter affidavit filed by the second respondent, it is stated that the proposals for acquiring the land for the purpose of providing burial ground for scheduled caste people was mooted in the year 2000. After obtaining the consent of the owners, that is, predecessors of the petitioners, draft notification proposals dated 15.7.2000 were submitted to the first respondent. But the same did not materialise for want of sufficient funds. Subsequently, the Commissioner of Social Welfare instructed the first respondent to acquire the land who accordingly approved the draft notification submitted in the year 2000. The same was published in the Gazette dated 04.10.2003. Therefore, the petitioners cannot assail the notification issued under the Act. It is further alleged that pursuant to the notification dated 10.3.2004 issued under Section 5A of the Act, the father of the first petitioner filed objections on 28.4.2004 and gave statement before the first respondent on 30.4.2004. After conducting enquiry, the District Collector approved the draft notification under Section 6 of the Act on 23.9.2004 and the same was published in the Gazette.

This Court has heard the learned Counsel for the petitioner, learned Assistant Government Pleader for Revenue (Land Acquisition) and learned Counsel for respondents 3 to 5. Learned Counsel for contesting respondents submits that the predecessors of the petitioners having given the consent for acquisition of the land, the petitioners cannot be permitted to assail the proceedings under the Act.

Even according to the counter affidavit filed by respondents 1 and 2, the proposal was taken up in the year 2000 and the draft proposal was submitted to the District Collector. The same was kept pending for want of funds. It is only in October 2003, the notification under Section 4(1) of the Act was published. Secondly, even according to the second respondent, the father of the first petitioner and others filed objections for acquisition of the land. Therefore, the consent given by the predecessors of the petitioners does not bar this writ petition. Be it noted, the petitioners also contend that the acquisition is not in accordance with law. There is force in their submission. There is no denial that though the notification under Section 4(1) of the Act was issued proposing to acquire the land for the provision of house sites to scheduled caste people of Chinaravuru village, the declaration was issued for provision of burial ground to scheduled caste people of Chinaravuru village. In such a situation, the land acquisition cannot be sustained as being legal and in strict compliance with Article 300A of Constitution of India.

This Court in **A.Narsamma v District Collector, Ananthapur** considered a similar case. In the said case, the land was proposed to be acquired for the purpose of providing house sites to persons belonging to weaker sections. However, in the declaration under Section 6(1) of the Act, which was issued, the land was sought to be acquired for establishment of Autonagar in Hindupur. The discrepancy was sought to be explained by the State as being a mistake committed by the Newspapers when the notifications were published. This Court, however, rejected the same and held that if there is a variance between the notification under Section 4(1) of the Act and the declaration under Section 6(1) of the Act, a valid publication of notification, which is mandatory, cannot be inferred. For this reason, the impugned

notification therein was declared illegal. The relevant observations made by this Court are as under.

> As seen from the above, in this case, there is no valid publication of the notification under Section 4(1) of the Act in two daily newspapers circulated in the locality. The notification under Section 4(1) of the Act published in the official gazette on 15.10.2001 (copy of which is produced before this Court) and the notification published in the newspapers on 7.11.2001 are different. The public purpose for which the notification under Section 4(1) of the Act was published is different from the public purpose published in the local newspapers. Though the 30.3.2002, the same must be held to be not in accordance with law as the same is published without there being a valid publication of notification under Section 4(1) of the Act. Therefore, the only recourse available to the respondents to publish the notification under Section 4(1) of the Act in two local newspapers correctly and then issue the declaration under Section 6(1) of the Act. However, having regard to the second proviso to sub-section (1) of Section 6 of the Act, that is also not possible for the respondents because no publication under Section 6(1) can be made after expiry of one year from the date of publication of the notification under Section 4(1) of the Act. Section 4(1) notification was published on 15.10.2001 and there being no valid compliance with Section 4(1) by publishing in two daily local newspapers, the respondents cannot now issue a declaration under Section 6(1) of the Act. In that view of the matter, the entire proceedings lapsed.

Having regard to the above position of law, this Court is of considered opinion that the impugned notification cannot be sustained. It shall however be open to the respondents to initiate fresh proceedings for acquiring the suitable land for providing burial ground to schedule caste people of Chinaravuru village.

In the result, for the above reasons, the writ petition is allowed without costs.

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(**V.V.S.RAO,J**)

.03.2006

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